IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
WRIT PETITION NO.2120 OF 2004

1. Dalamal Tower Premises
Co-operative Society Limited,
a Society registered under
the Maharashtra Co-operative
Societies Act, 1960, having
its office at B-11, Basement,
Dalamal Towers, Plot No.211,
Free Press Journal Marg,
Nariman Point, Mumbai-400 021.

2. Ramesh Ramchandani of Mumbai,
Indian Inhabitant, Secretary,
Dalamal Tower Premises
Co-operative Society Limited,
having his office at B-11,
Basement, Dalamal Towers,
Plot No.211, Free Press
Journal Marg, Nariman Point,
Mumbai-400 021. .... Petitioners

- Versus -

1. The Municipal Corporation of
Brihan Mumbai, a statutory
corporation constituted under
the Mumbai Municipal Corpora-
tion Act, 1888, having its
office at Mahapalika Bhavan,
Mahapalika Marg, Fort,
Mumbai-400 001.

2. The Municipal Commissioner,
The Municipal Corporation of
Brihan Mumbai, having his
office at Mahapalika Bhavan,
Mahapalika Marg, Fort,
Mumbai-400 001.

3. The Deputy Assessor and
Collector (City) having his
office at Municipal Head
Office Building, Mahapalika
Bhavan, Ground Floor, East
Wing, Mahapalika Marg,
Fort, Mumbai-400 001.

4. The Asst. Assessor and Collector

A/Ward, having his office at
A Ward Municipal Office,
134-E, Shahid Bhagatsingh
Road, Fort, Mumbai-400 001.

5. The State of Maharashtra .... Respondents

Sarvasri Aspi Chinoy with M.S. Doctor
i/b M/s. Junnarkar & Associates for the
Petitioners.

Shri Vinod Mahadik for the Respondent-BMC.

Shri Amjad Sayed, Asst. Government Pleader,
for the Respondent-State.

CORAM: R.M.S. KHANDEPARKAR, J.

DATED: OCTOBER 14, 2004

JUDGMENT:

1. Heard the learned Advocates for the parties. Perused the records. Rule. By consent, the rule is made returnable forthwith.

2. The petitioners challenge the order dated 24-3-2004 passed by the respondent-BMC and the demand for payment made pursuant to the bills - Exhibits R, S-1 to S-8 annexed to the petition being contrary to the provisions of law, illegal, and in excess of the powers conferred upon the authority under the provisions of law comprised under the Municipal Corporation Act, 1888, hereinafter called as "the said Act".

3. The facts of the case are that the petitioners are

the owners of the property having therein a building by name "Dalamal Tower", situated in Plot No.211, Backbay Reclamation, Municipal ‘A’ Ward No.1315 (127), Nariman Point, Mumbai. The building comprises of a basement, ground plus fifteen upper floors having two enclosed garages in the basement and 274 units of which 199 are self-occupied by the members of the petitioner-society while 75 units are in occupation of third parties on leave and licence basis and the compound of the building enables parking of 116 cars. In the year 1982, the rateable value of the property was fixed at Rs.22,77,885/- taking into consideration the estimated rent of Rs.125/- per 100 sq.mtr. for the basement and Rs.250/- per 100 sq.mtr. for the ground floor as well as the above floors of the building. The rateable value was increased from time to time and prior to 31-3-2001 it was fixed at Rs.41,32,735/- per annum on the basis of the above quoted unit letting value. On 29-3-2001 two notices bearing Nos.312 and 312-A being in relation to the year 2000-2001 were issued by the respondent No.4 informing about the increase in the rateable value of the said property to Rs.1,74,59,615/- per annum with retrospective effect from 1-4-2000 onwards. The petitioners lodged their objection/complaint in respect of the said two notices and it was registered as Complaint No.ACR/310 of 2000-2001. The Corporation issued a notice dated 15-4-2002 for investigation in

relation to the said complaint of the petitioners. Meanwhile, several writ petitions were filed in this Court challenging various circulars which were issued during the period from 2000-2002 by the Corporation including Writ Petition No.1116 of 2002 and 1721 of 2002 and during pendency of those writ petitions, pursuant to investigation of the complaint of the petitioners, the Corporation by its order dated 27-5-2002 reduced the rateable value of the said property to Rs.53,27,085/- per annum with effect from 1-4-2000 onwards. The Writ Petition Nos.1116 and 1721 of 2002 were disposed of by the order dated 23-10-2002 recording the statement on behalf of the Corporation that the impugned circulars were being withdrawn. Consequent to the said statement on behalf of the Corporation, it was ordered by this Court in those Writ Petitions that the action taken or assessment done pursuant to the said circulars also would not stand and the assessment done pursuant to the withdrawn circulars were declared to have been rendered ineffective and further it was observed that it was open to the Corporation to re-assess the properties for the purpose of property tax in accordance with law.

4. The facts further disclose that by Special Notices under Section 167 of the said Act bearing Nos.164 and 164-A, both dated 22-3-2002, the Corporation informed the petitioners about the increase in rateable value of

the said property to Rs.5,07,38,165/- with effect from 1-4-2001. The petitioners lodged their objections/complaints which were registered as Complaint Nos.ACR/257/2001-02 and ACR/310/2000-01. By notice dated 20-1-2003 the respondent No.4 informed the petitioner No.1 that the rateable value of the said property was reassessed at Rs.1,74,59,616/- per annum. The petitioners thereupon again lodged their objections/complaints against the reassessment of the rateable value informed to them under the notice dated 20-1-2003 and the same were lodged on 21-1-2003. By notice dated 11-12-2003, the petitioners were informed by the Corporation that the complaints filed by the petitioners would be disposed of on 29-12-2003. The petitioners thereupon submitted detail objection to the reassessment of the rateable value to the Corporation on 29-12-2003. Personal hearing was granted to the petitioners on 30-12-2003 by the respondent No.3. The petitioners lodged their further objections to the reassessment on 8-1-2004. The petitioners thereafter submitted a tabulated statement showing details of the self-occupied premises and other details as were called upon by the Corporation in respect of the said property and the same were submitted to the Corporation on 21-1-2004. The petitioners submitted affidavit dated 27-1-2004 to the Corporation in relation to the objections to the reassessment of the rateable value.

The petitioners received notices dated 11-3-2004 from the respondent No.4 regarding the investigation and hearing of the complaints to have been fixed on 17-3-2004. The same was adjourned thereafter to 24-3-2004. While the matter was pending with the Corporation, the petitioners lodged further objections on 23-3-2004 as well as on 24-3-2004 as regards the reassessment of the rateable value. By order dated 24-3-2004 the respondent No.3 upheld the retrospective reassessment of the rateable value of the said property. Further on 29-3-2004 the petitioners were provided with two tabulated statements giving break-ups of the calculation of the rateable value for each individual unit in the petitioner-society. On 2-4-2004 the petitioners filed two Appeals bearing Nos.848 and 849 of 2004 under Section 217 of the said Act before the Small Causes Court, Mumbai, which are pending for hearing. On 26-4-2004 the petitioners received bill dated 1-4-2004 demanding payment of property taxes for the period 1-4-2004 to 31-9-2004 at the reassessed rateable value for an amount of Rs.80,80,591/-. By letter dated 30-4-2004 the petitioners informed the respondent No.4 about the filing of the Appeals and their willingness to pay the property taxes as per the original rateable value. On 29-5-2004 the petitioners received eight supplementary bills all dated 31-3-2004 demanding the payment of the property taxes for the period 1-4-2000 to

31-3-004 at the reassessed rateable value for an amount aggregating to Rs.4,28,51,911/-. Hence, the present petition.

5. While assailing the impugned order and the demand for the property taxes by issuance of the bills in question, the learned Advocate for the petitioners submitted that the impugned order and the bills issued are ab initio bad in law, as having been issued without jurisdiction and in violation of the law laid down by this Court in the matter of **Municipal Commissioner of Greater Bombay v. Jeevan Jyot Office & Business Premises Co-operative Society Limited, Bombay,** delivered on 28-10-1980 in First Appeal No.393 of 1975 as well as in the matter of **Dr. Satish Dattatray Shivalkar v. Pimpri-Chinchwad Municipal Corporation and another,** reported in 2002 Vol.104 (2) Bom.L.R. 25. He further submitted that the respondents have acted contrary to the statutory mandate of Section 167 and several binding judgments of this Court as well as of the Apex Court in seeking to impose the revised rateable value retrospectively for a period prior to the commencement of the current financial year and in that connection reliance is placed in the decisions in the matters of **Dr. Satish Dattatray Shivalkar** (supra), **Municipal Corporation of City of Hubli v. Subha Rao Hanumatharao Prayag and others,** reported in (1976) 4 SCC 830 = AIR

1976 SC 1398, **Kalyan Municipal Council and others v. Usha Paper Products (P) Ltd. and another,** reported in (1988) 3 SCC 306 and **Sholapur Municipal Corporation v. Ramchandra Ramappa Madgundi,** reported in 1972 Vol.LXXIV Bom.L.R. 469 = 1973 Mh.L.J. 128. He has further submitted that the Corporation failed to consider that the assessee for the purpose of property taxes is the society in relation to the building in question and not the occupants of the units in the building independently and in that connection sought to rely upon the decisions in the matter of **Corporation of Calcutta v. Life Insurance Corporation of India,** reported in 1970 (2) SCC 44, **India Automobiles (1960) Ltd. v. Calcutta Municipal Corporation and another,** reported in (2002) 3 SCC 388 and **Municipal Corpn. of Greater Mumbai and another v. Kamla Mills Ltd.,** reported in (2003) 6 SCC 315. It was his further contention that the repeal of the old Rent Act and the applicability of the Maharashtra Rent Control Act, 1999 to the building in question does not change the situation so as to enable the Corporation to assess the self-occupied units separately from the units which are in occupation of third parties on leave and licence basis and in that connection reliance is sought to be placed in the decisions in the matters of **Municipal Corporation of Greater Bombay v. Polychem Ltd.,** reported in AIR 1974 SC 1779 and **Biswa Bandhu Sen v. Municipal Corporation**

of Greater Bombay and others, reported in 1981 Bom.C.R. 1006. Lastly, it was submitted that failure to pass a reasoned order tantamounts to failure to exercise the jurisdiction in the manner it was required to be exercised and thereby denial of lawful exercise of the right of appeal which is statutorily assured to the aggrieved party and in those circumstances the order being rendered without jurisdiction, the same can be challenged in writ jurisdiction irrespective of availability of alternative remedy in the form of appeal and in that connection reliance was sought to be placed in the decision in the matter of **Food Corporation of India v. State of Punjab and others,** reported in (2001) 1 SCC 291 and **Lt. Col.P.R. Chaudhary (retd.) v. Municipal Corpn. of Delhi,** reported in (2000) 4 SCC 577.

6. The learned Advocate appearing for the respondent-Corporation, on the other hand, has submitted that it is not a case of reassessment retrospectively but it is a case of reassessment pursuant to the liberty granted in that regard by the order of this Court passed on 23-10-2002 in Writ Petition No.1721 of 2002. It was further submitted that in view of the fact that the provisions of the Maharashtra Rent Control Act, 1999 are not applicable to the cases where the premises are occupied by the banks or financial institutions and no

fault can be found with the order assessing the rateable value in respect of the units which are in occupation of such financial institutions based on the licence fee quoted by the owners of such units since the law laid down in relation to the standard rent to be the basis for fixation of the rateable value cannot apply to the cases where the Rent Act is not applicable to the buildings. Referring to the order dated 23-10-2002 in Writ Petition No.1721 of 2002, it was submitted by the learned Advocate for the Corporation that the said order clearly empowers the Corporation to reassess the properties for the purpose of property tax in the cases where the earlier assessment was based on the circulars which were withdrawn consequent to the statement to that effect made before this Court on 23-10-2002. Once it is not disputed that the earlier fixation of the rateable value was on the basis of those circulars which were withdrawn, considering the liberty granted by this Court in the said order, no fault can be found with the assessing authority reassessing the rateable value, excluding those circulars and in accordance with the provisions of law. The arguments against the retrospective assessment was also sought to be countered by submitting that consequent to the assessment done on the basis of the circulars being rendered ineffective, the original notices which were issued for assessment with effect from 1-4-2000 stood revived and the present

assessment would relate to those notices and therefore it cannot be said to be a retrospective assessment. Since each unit in the building is owned independently by the shareholders, it cannot be said that the owners are not the assessees for the purpose of assessment of the property tax and therefore assessing the rateable value of the self-occupied units different from those which are in occupation of the third parties on leave and licence basis cannot be said to be illegal.

7. The impugned order which is passed reassessing the rateable value in the matter of Complaint Nos.310 and 257 filed by the petitioners clearly records that the reassessment was done consequent to taking note of the order in the Writ Petition No.1721 2002 leaving it open to the Corporation to reassess the properties for the purpose of the property tax strictly in accordance with law. At the same time, it has also been recorded that "In accordance with the provision of Section 167 of MMC Act of 1888 retrospective assessment cannot be done but it is of the Corporation’s privilege to make prospective assessment.". It has been further noted in the impugned order that "Further Section 154 of Mumbai Municipal Corporation Act, fundamentally does not distinguish between self occupied and leased out premises. Further more Section 154 has been interpreted by the Hon. Supreme Court clearly and accordingly, by the standard

rent is the only basis on which the rateable value needs to be assessed.". The order further records that "The assessment of the let out premises is made according to the changes in the circumstances like change in the rent control act, change in the occupier which proves the capability of letting value of let out premises, it is also under the rating principles of Rebus-Stic-Stantibus to fix the reasonable rent of the premises under Sec.154 of MMC Act." After making the above notings in the impugned order, it has been held under the impugned order that "As regards assessment of the premises let on lease they are assessed as stated above in Statement No.II by discarding the compensation but adopting the rate of Rs.3250/- per 10 m2 as per the above statement so as to arrive at a reasonable rent as contemplated under the provision of Sec.154 of M.M.C.Act, 1888."

8. The building in question undisputedly belongs to the petitioner No.1-Society which is the registered owner thereof under the said Act and unit holders in the building are its shareholders and the members. Being so, as rightly submitted by the learned Advocate for the petitioners, to arrive at a just and proper decision in the matter on the point in issue sought to be raised, the unreported decision in **Jeevan Jyot's** case (supra), delivered on 28-10-1980, assumes great importance as the facts of the said case were similar to the facts of the

case in hand. In the said case the property in relation to which the assessment was done was a building owned by a co-operative society and the occupants of the flats were the shareholders and the members of the said society. Though the said members and the shareholders were entitled to possess the flats, the building as such belonged to the society, as in the case in hand. The Corporation while fixing the rateable value of the building at Rs.86,610/- sought to change the flats in two categories - one category of flats which were occupied by the members themselves and the another by those occupied by the licensees of the members on payment of licence fee or compensation to the members, and on such division it was sought to be contended that the Corporation was entitled to take into account the compensation received by the members from the licensees for the purpose of fixation of the rateable value in relation to such units which are in occupation of the licensees of the members. While rejecting the contention to be fallacious, it was observed that the licence could never be determinative of what ordinarily a building could fetch by way of rent as the licensees were temporary occupants and therefore could be tempted to pay more than the standard rent due to expediency the occupants were required to take the premises to meet their immediate needs and secondly, what members or shareholders receive from the occupants could not be

relevant for determining what the owner i.e. the society could reasonably be expected to receive by way of rent at the market rate. Besides, the members of the society could neither claim to be the owners of any part of the building or even of the flats in their respective occupation. It was further held that "the Corporation has no right to take into account for the purpose of fixation of the rateable value the amount of compensation received by the members from their licensees when the tax is assessed on the Society on the hypothesis that the Society is the owner of the property.". The decision in Jeevan Jyot's case was followed by the learned single Judge in **Biswa Bandhu Sen's** case (supra) while upholding the contention on behalf of the assessee that the system adopted by the Corporation in revising the rateable value of the building by finding out the amount of compensation received by the members/owners of each of the flats separately was totally irregular.

9. Similar matter arose again in the case of **Municipal Corporation of Greater Bombay and others v. Maker Bhavan No.11, Commercial Premises Co-operative Society Ltd.,** reported in 1991 (4) Bom.C.R. 56. Therein till 1-4-1972 the building which was partially occupied had the rateable value fixed at Rs.1,01,285/- was revised by reason of certain additions which were made in the

units. The revision was an upward one. Some of the units in the building were in occupation of commercial undertakings on leave and licence basis granted by respective allottee members and the licence fee charged in each case was different. While rejecting the petition of the Corporation, it was held that two different standards for fixation of the rateable value could not have been adopted by the Corporation in respect of different units of the very same building as the ownership of the building vested in the co-operative society and the possession and interest therein of the members was not as the tenants of the society but on account of their share holding in the society and their membership thereof, and that the right to recover rent or licence fee was of the individual member or the members of the society only so far as the creation of a licence or tenancy of the concerned unit and in that behalf the society could not lay any claim or a right for itself to recover the rent or the licence fee from the transferee or the licencee of its members. It was also held that the rent recoverable by a member from his licence could not, therefore, be taken into consideration for fixing rental value against the society and the society was not at all concerned with the enhanced amounts of consideration charged by the members by way of licence fees and could not apply such enhanced licence fees as a mode of consideration to

differently treat some of the units in the building.

10. The Apex Court in **Corporation of Calcutta v. Life Insurance Corporation of India,** reported in 1970 (2) SCC 44, while dealing with a case wherein Messrs. A. Firpo Ltd., who were the tenants of the premises No.11, Government Place East, Calcutta at a monthly rent of Rs.2,000/- which was later increased to Rs.2,800/- by an agreement, had sub-let a major portion of the premises to different tenants. The Corporation of Calcutta which assessed the annual value of the premises at Rs.32,076/- prior to 1-4-1955 increased the annual value to Rs.62,761/-. The objection to the determination was rejected by the Corporation and in appeal the Small Causes Court and further the High Court assessed the annual value on the footing of the standard rent and fixed the the same at Rs.30,240/-. In appeal to the Apex Court, while rejecting the same and taking note of the fact that it was common ground that the standard rent of the premises was Rs.2,800/- per month, it was held that the quantum of the consolidated rate depends upon the annual value of the land or the building on the gross rent for which the land or the building might reasonably be expected to let and not the gross rent at which the subordinate interest of a tenant may be expected to sub-let. It was ruled that:-

> "In determining the assessment of annual value, the assessing authority is not concerned with the rent which the tenant may receive from his sub-tenant. It is the gross rent which the owner may realise by letting the land or building under a bargain "uninfluenced by extraneous considerations" which determine the annual value."

11. Considering the law laid down by this Court as well as the Apex Court, it is clear that for the purpose of assessing the rateable value of the building owned by the co-operative society, the quantum of receipt of the licence fee or rent amount from third parties by the members or the shareholders of the society in respect of the respective units allotted to them in the building of the society is totally irrelevant. The assessing authority in such cases cannot itself be concerned about different amounts which the individual shareholders or the members of the society may receive in respect of their respective units in the building of the society from their respective licensees or tenants. What is relevant is a reasonably expected amount of rent for the building by the owner without being influenced by the individual income of some of the unit holders pursuant to the letting out of their respective units either on

lease or allowing them to be occupied on licence.

12. Undisputedly, in the case in hand, the rateable value has been assessed for the basement of the building at Rs.125/- per 10 sq.mtr., and in relation to the ground and upper floors at the rate of Rs.250/- per 10 sq.mtr. However, only in case of those units which are stated to be in occupation of licensees or leased in favour of banks or financial institutions, different rates have been applied. While in the case of Oriental Bank of Commerce and the Canara Bank on the ground floor, it has been calculated at Rs.3,250/- per 10 sq.mtr., in the case of the Corporation Bank on the fourth floor, it has been calculated at the rate of Rs.1,950/- per 10 sq.mtr., so also is the case in respect of FICOM on the fifth floor and the like. In other words, though in case of self-occupied premises a flat rate of Rs.250/- per 10 sq.mtr. is followed except for the ground floor as well as the upper floors of the building, in case of the premises which have been given by the members on leave and licence basis to third parties, the Corporation has adopted a totally different criteria and the letting rate of Rs.3,250/- or Rs.1,950/- has been adopted for per 10 sq.mtr. for the purpose of fixation of the rateable value. Obviously, the criteria adopted in distinguishing the self-occupied premises from those which are in occupation of different

commercial undertakings on account of having been allowed to be occupied on leave and licence basis is contrary to the law laid down by this Court in Jeevan Jyot's case and followed in Biswa Bandhu Sen as well as in **Maker Bhavan's** case (supra).

13. The second ground of challenge relates to misconstruction and misreading of the order dated 23-10-2002 in Writ Petition No.1721 of 2002. According to the learned Advocate for the petitioners, the Corporation by virtue of the liberty granted under the said order cannot reassess the rateable value contrary to the provisions of law as well as the binding principles of law laid down by the various decisions of this Court and the Apex Court. Apart from the fact that such a liberty can never be construed to authorise the authorities to act contrary to the provisions of law, according to the learned Advocate for the petitioners, the Division Bench has specifically observed in the order dated 23-10-2002 that the reassessment would be only in accordance with the provisions of law. He has further submitted that the empowerment to reassess would not entitle the Corporation to levy the tax retrospectively and therefore by the notice issued in June, 2003 i.e. 20-1-2003 the reassessment could not have been for the year prior to 2002-2003. In other words, the reassessment could have been with effect from

1-4-2002 onwards and therefore for the period till 31-3-2002 there could not have been the revision of the rateable value.

14. It cannot be disputed that by order dated 23-10-2002, the Division Bench had permitted the Corporation to reassess the properties consequent to withdrawal of the circulars in cases where the earlier assessments were done on the basis of those circulars. It is also not in dispute that the said order is binding upon the petitioners as the petitioners were parties to the proceedings wherein the said order was passed. Equally it is apparent that the liberty for reassessment of the properties for the purpose of proper taxes was "in accordance with law". Indeed, the para 4 of the said order reads that:-

> 4. Needless to say that it is always open to the respondents to re-assess the properties for the purpose of property taxes in accordance with law."

Even otherwise the properties are never to be assessed contrary to the provisions of law as the resultant action by the Corporation would be contrary to the mandate of the Constitution incorporated in Article 265 thereof.

15. The petitioners are also justified in making grievance about non-entitlement of the Corporation to enhance the tax retrospectively. The learned single Judge of this Court, as she then was, in **Abdeali Shaikh Tayebali Zaidy & Anr. v. The Bombay Housing Area and Development Board & Ors.,** reported in 1988 Mh.L.J. 707, after taking into consideration various provisions of the said Act and taking note of the Full Bench decision of this Court in the **Sholapur Municipal Corporation's** case (supra) in relation to the provisions of the Bombay Municipal Boroughs Act, 1925, which were in material particulars similar to the provisions of the said Act held that where additional entries are made or amendments are carried out in the ward assessment book, it can operate only from the earliest day in the current official year i.e. in the year in which such amendment of entry is made and not in any year prior to such official year. Reliance was also placed in the matter of **Subha Rao Hanumatharao's** case (supra), wherein it was held that:-

> "Once we take the view that the process of levying the tax is complete only when the assessment list is authenticated and it is only then that the tax is levied on the rate-payers, it is difficult to

> resist the conclusion that the authentication must be made within the official year. The tax, being a tax for the official year, must obviously be levied during the official year and since the levy of the tax is complete only when the assessment list is authenticated, it must follow a fortiori that the authentication on the making of which alone the levy of the tax is effected, must take place in the official year. Any other view would result in an anomalous and rather absurd situation, namely that the tax for an official year would be leviable at any time, even years after the expiration of the official year."

These observations squarely apply to the case under the said Act also. Hence the retrospective imposition of tax cannot be held to be valid.

16. The learned Advocate appearing for the Corporation has sought to distinguish the decisions relied upon by the learned Advocate for the petitioners in the matter of Jeevan Jyot and followed in Biswa Bandhu Sen as well as Maker Bhavan’s cases as also the decision of the Apex

Court in **Life Insurance Corporation of India's** case (supra). It is sought to be contended that in cases where the Rent Act is not applicable, there is no requirement of adopting the standard rent rule nor there is bar against taking into consideration the actual rent which is being collected by the owner or its assignee in relation to the units in a building, and in such cases adopting different criteria in relation to the self-occupied premises than in the case of let out premises is not prohibited and in that connection reliance is sought to be placed in the decision of the Apex Court in the matter of **India Automobiles (1960) Ltd. v. Calcutta Municipal Corporation and another,** reported in (2002) 3 SCC 388. Attention is also drawn in that regard to the provisions of the Maharashtra Rent Control Act, 1999 and in particular to Section 3 which specifically provides that the said Act does not apply to the premises which are let or sub-let to banks and financial undertakings or companies. The learned Advocate for the petitioners, however, has submitted that the decision in **India Automobiles's** case (supra) rather than supporting the contentions which are sought advanced on behalf of the respondents would justify the rejection thereof and in that regard reliance is placed in the matter of **Kamla Mills Limited** (supra).

17. In India Automobiles case, it was held that the

Apex Court after taking note of its various earlier decisions on the point in issue, it was observed that the Apex Court has taken a consistent view regarding determination of the annual value of the land or building for the purpose of determination of taxes under the Municipal Acts and on the basis of various statutes relating to determination of the annual value for the purpose of property taxes the Apex Court has devised two distinct group. One such group deals with the Municipal Acts of some States which do not expressly exclude the application of the Rent Restriction Act in the matter of determination of annual value of a building for the purpose of levying the municipal taxes and the other group deals with the Municipal Acts which expressly exclude the application of the Rent Restriction Act in the matter of determination of the annual value of the land or building on rental method and further that in the first category of cases, the determination of the annual value has to be made on the basis of fair or standard rent and not in terms of the actual rent, even if it exceeds the statutory limit, whereas in the other group where the applicability of the Rent Act is excluded, the determination of the annual value of the building on the rental method is referable to the method provided under the relevant Municipal Act. It was specifically held that the decisions in the matter of **Corporation of Calcutta v. Padma Debi,** reported in AIR

1962 SC 151, **Corporation of Calcutta v. Life Insurance Corporation of India** (supra), **Guntur Municipal Council v. Guntur Town Rate Payers' Assn.,** reported in (1970) 2 SCC 803 and **Dewan Daulat Rai Kapoor v. New Delhi Municipal Committee,** reported in (1980) 1 SCC 685 deal with the first group of Municipal Acts and the cases in **Municipal Corpn., Indore v. Ratnaprabha,** reported in (1976) 4 SCC 622, **Asstt. G.M., Central Bank of India v. Commr. Municipal Corpn. for the City of Ahmedabad,** reported in (1995) 4 SCC 696, **East India Commercial Co. (P) Ltd. v. Corpn. of Calcutta,** reported in (1998) 4 SCC 368, **Balbir Singh (Dr.) v. M.C.D.,** reported in (1985) 1 SCC 167, **Indian Oil Corpn. Ltd. v. Municipal Corpn.,** reported in (1995) 4 SCC 96 and **Srikant Kashinath Jituri v. Corpn. of the City of Belgaum,** reported in (1994) 6 SCC 572 deal with the second group of the Municipal Acts.

18. In Kamla Mills case, the Apex Court, after taking note of the various cases including the case in the matter of India Automobiles and arising from the case under the said Act, while reiterating the law laid down by the Apex Court in India Automobiles case, reproduced with approval the ruling in the said case wherein it was held thus:-

"As already noticed even without

specific determination, the standard rent was held to have been statutorily determined under Section 2(10)(b) of the Rent Act. Upon analysis of the various municipal laws and the judgments of this Court it is held that in cases where the municipal laws exclude the applicability of the rent Acts by incorporating non obstante clause in the taxing statute, the powers of the authorities under the Municipal Acts are not circumscribed by the limits indicated in Padma Debi case and followed in that group of cases. In cases where the fair rent payable by the tenant has been determined and there is no justification for refusing to accept that fair rent as rental value of the premises, the municipal authorities should generally accept the standard rent fixed, notwithstanding the non-applicability of the rent Acts because such a view would be a reasonable guideline to determine the rate of rent at which such land or building might, at that time of assessment, be reasonably expected to let from year to year. The rent which

> the tenant is receiving from his sub-tenant is also an important statutory consideration for determining the rent at the time of assessment to which the property might reasonably be expected to be let from year to year. Such a consideration is also justified on the principles of reasonableness. We cannot agree that in all cases, notwithstanding the non obstante clause the annual rental value cannot be fixed beyond the standard rent determined or determinable under the rent statute. We also find it difficult to hold that in all cases the rent actually paid by the sub-tenant to the tenant be taken as the sole criterion for determining the annual value on the assumption that such land or building might, at the time of assessment, be reasonably expected to get the aforesaid amount of rent if let from year to year."

It was further ruled that the said Act neither contains the statutory definition of "rateable value" nor does it lay down the manner in which the rateable value has to be computed, and that the said Act neither contains the

defining clause nor a non obstante clause which could hold field, in terms of the definition of "standard rent" in the Bombay Rent Act and therefore such cases would fall within the general principle laid down by series of judgments commencing from **Padma Debi** (supra) and ending with **Srikant Kashinath Jituri** (supra).

19. The law therefore is well-settled that in cases where the Municipal Act of a State which do not expressly exclude the application of the rent restriction legislation in the matter of determination of the annual value of a building for the purpose of levying municipal taxes, the determination of annual value has to be made on the basis of fair or standard rent, irrespective of the fact that the actual rent received by the owner may exceed such statutory limit imposed under the Rent Restriction Act in force in the State. However, in cases where the Municipal Act expressly excludes the applicability of the Rent Restriction Act in the matter of determination of the annual value of the building or the land, there can be no such restriction in the matter of determination of the annual value.

20. Undoubtedly, Section 3(1)(b) of the Maharashtra Rent Control Act, 1999 excludes the applicability of the provisions of the same Act to the premises let or

sub-let to the banks or Corporations or the companies having paid up share capital of rupees one crore or more. Considering the same, it is sought to be contended on behalf of the respondents that once the premises are excluded from the applicability of the Rent Act, the restrictions imposed in relation to adopting the standard rent theory for the purpose of fixation of the rateable value cannot be made applicable to such cases. The contention is totally devoid of substance. The law in relation to the exclusion of applicability of the standard rent theory for the purpose of fixation of rateable value is based on the exclusion of applicability of the provisions of the Rent Restriction Act for the purpose of fixation of the rateable value under the Municipal Act. Mere non-applicability of the Rent Restriction Act to a particular premises will not be a criteria to exclude the applicability of the standard rent theory for determination of the rateable value for the purpose of property taxes under the Municipal Act. Irrespective of the fact that the Rent Restriction Act is not applicable to a particular premises and on that count the owner may recover the rent beyond the standard rent otherwise applicable to the premises to which such Rent Restriction Act applies, that will not enure to the benefit of the Corporation to contend that non-applicability of the Rent Restriction Act under that Act would ipso facto stand incorporated

in the said Act and particularly in relation to the provisions pertaining to the fixation of the rateable value. The proper reading of the decisions of the Apex Court and the consistent view taken by the Court in all those decisions would reveal that the exclusion spoken of relates to the specific provision in that regard in the Municipal Act and not the exclusion of the Rent Restriction Act to a particular premises under the State legislation dealing with the rent restrictions. Being so, merely because under Section 3(1)(b) of the Maharashtra Rent Control Act, 1999 the premises let out to the banks and companies and financial bodies with paid up share capital of rupees one crore or more, that would not justify ignoring the law laid down by the Apex Court in the matter of fixation of the rateable value and adopting the basis of the actual rent collected from the tenants by the owners of such premises, apart from the fact that the law laid down by this Court in Jeevan Jyot, Biswa Bandhu Sen and Maker Bhavan's cases does not permit the Corporation to differentiate the self-occupied units from the units which are allowed to be occupied by the licensees in a building belonging to a co-operative society. The exclusion spoken of under the Indian Automobile's case is in relation to applicability of the rent restriction legislation to the assessment proceedings under the Municipality Act, and not to any premises as such.

21. Assuming that the exclusion of the premises from the applicability of Rent Legislation can perhaps be a ground for not following the standard rent rule for assessment of the rateable value, even then, it would not be of any help to the Corporation in a case where the building in question belongs to the society and the units in the building do not belong to the members of the society but they are merely allotted for their occupation, and who is assessed for the property tax is the society in relation to the building as a whole. Therefore, merely because, for the purpose of applicability of the rent legislation, the premises or an unit from such building may stood excluded, it would not enure to the benefit of the respondents to assess the said unit separately when the same forms part of such a building belonging to a society. Undisputedly, the building in question belongs to the society and the units thereof are allotted to its members, besides that the tax liability rests upon the society and it relates to the building as a whole.

22. It was sought to be contended on behalf of the respondents that in view of availability of appeal, there is no justification for the petitioners to invoke the remedy of writ petition and the petition therefore should be dismissed as undisputedly the petitioners have

also filed an appeal. Countering this contention, the learned Advocate for the petitioners has submitted that the order sought to be challenged being totally without jurisdiction and contrary to the law laid down by this Court as well as by the Apex Court, the question of non-suiting the petitioners on the ground of availability of alternative remedy does not arise and in that connection reliance is sought to be placed in the decision in the matter of **M/s. East India Commercial Co. Ltd., Calcutta and another v. Collector of Customs, Calcutta,** reported in AIR 1962 SC 1893 and of the Division Bench of this Court in **Naman Developers Pvt. Ltd. & another v. Municipal Corporation of Greater Mumbai & others,** reported in 2002 (6) Bom.C.R. 561.

23. In **M/s. East India Commercial Co. Ltd., Calcutta** (supra), it was clearly held that from the facts disclosed from the records revealed absence of jurisdiction to initiate proceedings and to pass the order under challenge, then there could be no bar for a party to approach the Court in writ jurisdiction. In **Naman Developers'** case (supra), the Division Bench reiterating its earlier decision in **Rialto Co-operative Housing Society Ltd. v. Municipal Corporation of Greater Bombay,** reported in 1998 (1) Bom.C.R. 397 as well as relying upon the decision of the Apex Court in

Polychem Limited's case (supra), has held that since the stand of the assessor was contrary to the judgment of the Apex Court in Polychem Limited's case and the Writ Petition in **Rialto Co-operative Housing Society's** case (supra) was entertained and allowed even though the appeal against the impugned order was pending. It was ruled that:-

> "Once the Apex Court had ruled that land under construction has to be treated as vacant land, obviously, the Assessing Officer had no jurisdiction to hold otherwise and treat land under construction not as vacant plot of land. The action of Assessing Officer in Rialto was ex facie without jurisdiction and, therefore, this Court was satisfied to invoke extraordinary jurisdiction under Article 226 of the Constitution of India."

In the case in hand, as already seen above, the impugned order is clearly in contravention of the law laid down by various decisions of this Court including Jeevan Jyot, Biswa Bandhu Sen and Maker Bhavan's case and of the Apex Court in India Automobiles's case as well as in Kamla Mills's case. Being so, the objection for the

maintainability of the writ petition is totally devoid of substance.

24. Lastly the petitioners have also raised the point regarding violation of the basic principles of natural justice as well as the order passed being a non-speaking order. Indeed, the impugned order apart from saying that the authorities are empowered to reassess by virtue of the order passed in the Writ Petition No.1721 of 2002, the assessment no where discloses the basis, the reasons and the circumstances in which reassessment has been made. As rightly submitted by the learned Advocate for the petitioners, the Apex Court in **Food Corporation of India v. State of Punjab and others,** reported in (2001) 1 SCC 291, it was clearly held that the authority amending the assessment list has to observe certain criteria and in that regard it was ruled that:-

> "Care has also to be taken to comply with the principles of natural justice by making the provision for giving notice to the person who is likely to be affected by the proposed amendment giving him not less than a month’s time to tender objection, if any, to the committee and allowing him an opportunity of being heard in support of

> the objections raised. Notice to the affected person mandated in the section is not an empty formality; it is meant for a purpose. A vague and unspecified notice will not provide reasonable opportunity to the noticee to file objection meeting the reasons/grounds on which the amendment of the assessment list is proposed to be made."

In the case in hand, neither notice nor the impugned order discloses the basis on which the reassessment has been made except that it discloses certain figures having been arrived at by the authorities for the purpose of reassessment. The same do not disclose the ground and the basis for arriving at those figures and therefore the learned Advocate is justified in contending that the order is a non-speaking order. Undoubtedly, such an order carries civil consequences and therefore the authorities are required to pass a reasoned order justifying reassessment when the parties file their objections for such reassessment. The authorities are required to deal with the objections and to arrive at the appropriate findings in relation to such objections. It is to be noted that the order passed by the authorities is subject to an appeal and the appellate authority is entitled to know the reasons

and the basis on which the findings are arrived at. The party aggrieved by the order of the authorities is also entitled to know the same so that it can effectively put forth its case in the appeal. The authorities having totally failed to comply with the same have clearly acted illegally.

25. For the reasons stated above, the impugned order revising the assessment cannot be sustained and is, therefore, liable to be quashed and set aside. Needless to say that such setting aside of the revision of assessment would entitle the Corporation to claim the arrears at the rate of unrevised assessment and in case of reassessment to initiate fresh proceedings in that regard bearing in mind the observations hereinabove, including in relation to prohibition for reassessment retrospectively.

26. The petition, therefore, succeeds. The same is allowed and the rule is made absolute in terms of the prayer clauses (a) and (b) with no order as to costs.